

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>Mario Magallón, Alejandro Olivares,</b>	)	
<b>Guillermo Gama and Genaro Gama ,</b> on	)	
behalf of themselves and all other	)	
Plaintiffs similarly situated known and	)	
unknown	)	<b>Case No. 10 cv 8048</b>
	)	
Plaintiffs	)	<b>Magistrate Judge Cole</b>
	)	
v.	)	
	)	
<b>Vito Di Pinto Landscaping, and Juan</b>	)	
<b>Diego, individually</b>	)	
	)	
Defendants	)	

**PLAINTIFFS' MOTION FOR REINSTATEMENT,  
AGREED MOTION FOR ENTRY OF  
JUDGMENT AND ATTORNEY FEES**

**NOW COME** Plaintiffs, by their attorney of record, and in support of Motion For Reinstatement, and their Agreed Motion For Entry of Judgment and Attorney Fees, states as follows:

1. On December 20, 2010, this matter was filed with the United States District Court on behalf of .
2. Approximately May 7, 2012 the matter was resolved between the parties and a settlement agreement was executed by the named and opt-in Plaintiffs.

The Agreement contains the following payment schedule:

2. **Payment and Other Settlement Terms.**

A. The Defendants agree to pay the total sum of Eighty Thousand and No/100 Dollars (\$80,000.00) (the "Settlement Sum"), as more fully described in this paragraph. The Settlement Sum is in full and final settlement of all claims Employees and the Opt-In Plaintiffs now have or may have against the Defendants, known or unknown, which were raised or not raised in the District Court action, inclusive of the costs, expenses and attorneys' fees incurred by Employees or to which his attorneys may be entitled and is in exchange for the General Release provided by Employees and the other promises (including confidentiality) made by Employees and the Opt-In Plaintiffs herein.

B. The Settlement Sum shall be payable in five (5) installments as follows:

(i) The amount of Ten Thousand and No/100 (\$10,000.00) shall be payable on or before the Effective Date of this Agreement (as defined below);

(ii) The amount of Ten Thousand and No/100 (\$10,000) shall be payable within thirty (30) days of the Effective Date of the Agreement;

(iii) The amount of Twenty Thousand and No/100 (\$20,000.00) shall be payable on or before December 1, 2012;

(iii) The amount of Twenty Thousand and No/100 (\$20,000.00) shall be payable on or before December 1, 2013; and

(iv) The amount of Twenty Thousand and No/100 (\$20,000.00) shall be payable on or before December 1, 2014.

3. Defendants Vito DiPinto Landscaping and Juan Diego have breached the Agreement in that payments as specified therein have not been made.

4. The Agreement contained the following provision in the event of any breach by either party:

8. **Default.** If Defendants fail to make any of the Installment Payments due hereunder within five (5) business days of the date due, then the entire Settlement Sum (less Installment Payments previously made) shall be immediately due and payable, and Employees shall be entitled to entry of judgment in the Court in the amount of the Settlement Sum plus all reasonable attorneys fees and costs incurred in enforcing the provisions of this Agreement, and Defendants shall confess judgment in that amount.

5. Plaintiffs have patiently worked with Defendants in terms of honoring this Agreement over the past two years. To date, Defendants have paid the following, leaving an unpaid balance of \$34,000.00

Paid To Date	
5/31/2012	\$ 10,000.00
9/28/2012	\$ 10,000.00
12/21/2012	\$ 2,000.00
2/19/2013	\$ 3,000.00
4/2/2013	\$ 4,000.00
6/4/2013	\$ 4,000.00
7/18/2013	\$ 3,000.00
10/3/2013	\$ 4,000.00
12/30/2013	\$ 2,000.00
4/11/2014	\$ 4,000.00
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	\$ 46,000.00

**Balance Due as of September 25, 2014**

**\$34,000.00**

6. This Court entered an order on 7/12/13 as follows.

07/12/2013	<a href="#">67</a>	MINUTE entry before Honorable Jeffrey Cole:Plaintiffs' motion to amend/correct the record <a href="#">65</a> is granted. The order of 5/7/2012 <a href="#">59</a> is corrected as follows: the case is dismissed without prejudice and the court will retain jurisdiction as the parties have requested. If the case has not been reinstated by 12/1/2014 for purposes of enforcing the settlement, the order of dismissal shall be with prejudice without further order of court. The order shall stand in all other respects.
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Plaintiffs' request by this Motion to reinstate the case for the purpose of enforcing settlement and entry of Default.

8. In addition, the Agreement as specified in paragraph 8 (above) contains provision pertaining to fees incurred in the enforcement of the provisions of the Agreement.

9. Plaintiffs' counsel has incurred otherwise unnecessary fees collection and bringing this Motion To Reinstate and Motion To Enforce Settlement. By his signature to this Motion, Plaintiff's attorney John W. Billhorn attests to the expenditure of an additional 3.25 x \$475/hr; 10 hours of paralegal time x \$145.00 for a total of an additional \$2,993.75 in pursuit of this Agreement. To the extent future attorney's fees are incurred in the enforcement of the Agreement and the payment of the same, Plaintiffs expressly reserve their right to petition the Court for an amendment or supplemental judgment in order to recover any such additional fees

10. Plaintiffs request this Court to enter this interim judgment in the amount of \$34,000.00 in unpaid settlement to Plaintiffs and \$2,993.75 in attorney's and paralegal fees for a total amount of \$36,993.75.

WHEREFORE, Plaintiffs request this Court to grant Plaintiffs request to reinstate their case, and grant their Agreed Motion For Entry of Judgment and Attorney Fees on behalf of Plaintiffs and against Defendants **Vito Di Pinto Landscaping, and Juan Diego** in the amount of \$36,993.75, and for such other relief as the Court deems appropriate under the circumstances.

Respectfully Submitted

*Electronically Filed 11/29/2014*

s/ John W. Billhorn

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John W. Billhorn

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